

**ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ALCOHOLIC BEVERAGE CONTROL BOARD**

NOTICE OF FINAL RULEMAKING

The Alcoholic Beverage Control Board (Board), pursuant to the authority set forth in the Title 25, D.C. Code Enactment and Related Amendments Act of 2001, effective May 3, 2001 (D.C. Law 13-298; D.C. Official Code § 25-351(a) (2012 Repl.)), and Section 303 of Title 23 of the District of Columbia Municipal Regulations (DCMR), hereby gives notice of the adoption of final rules that replace the existing Section 306 (East Dupont Circle Moratorium Zone) of Chapter 3 (Limitations on Licenses) of Title 23 (Alcoholic Beverages) of the District of Columbia Municipal Regulations (DCMR).

This rulemaking will impose a three (3) year moratorium on the issuance of any new Retailer Class CT/DT and CN/DN licenses issued in a portion of East Dupont Circle which shall be known as the East Dupont Circle Moratorium Zone (EDCMZ). The rules also lift the restrictions on the number of Retailer Class A, Class B, Class CR/DR, and Class CX/DX licenses; retain the current exemptions for hotels; retain the existing language pertaining to the transfer of ownership; retain the prohibition on the transfer of Retailer Class CT/DT or CN/DN from outside the moratorium zone to inside the moratorium zone; and retain the prohibition on the change of all Retailer Class CT/DT or CN/DN licenses.

By way of background, the existing moratorium expired on September 23, 2013. The Board voted on an emergency basis on September 18, 2013, by a vote of five (5) to zero (0) to keep the existing moratorium temporarily in place. The Board required additional time to consider two proposals submitted by community groups regarding the future of the EDCMZ.

On August 19, 2013, Advisory Neighborhood Commission (ANC) 2B filed a Resolution to Extend and Modify the East Dupont Circle Liquor Moratorium (Resolution). This Resolution was adopted by the ANC on August 14, 2013. The ANC Resolution resulted from a series of public meetings that were held by the ANC from May 2013 through August 2013, with the purpose of receiving public input from stakeholders and constituents in order to formulate a recommendation for the Board.

In summary, the ANC sought renewal of the existing EDCMZ for a three (3) year period with certain modifications. Those modifications included maintaining the cap on Retailer Class CT/DT and CN/DN; lifting the restrictions on the number of Retailer Class A, Class B, Class CR/DR, and Class CX/DX licenses; retaining the current exemptions for hotels; retaining the existing language pertaining to the transfer of ownership; retaining the prohibition on the transfer of Retailer Class CT/DT or CN/DN from outside the moratorium zone to inside the moratorium zone; and retaining the prohibition on the change of all Retailer Class CT/DT or CN/DN licenses.

The second proposal was submitted by the Dupont Circle Citizens Association (DCCA) on August 13, 2013. The DCCA requested a temporary one hundred twenty (120) day extension to

allow time for further research. Additionally, the DCCA sought to collect additional data it deemed relevant to the undertaking of this rulemaking; specifically the status of inactive licenses, and the analysis of the potential effects of all options. Furthermore, the DCCA desired to form a working group on retail and arrive at a collaborative agreement with other interested parties.

The Board believed that both proposals merited further evaluation and thus held a hearing on October 24, 2013, pursuant to D.C. Official Code § 25-354 (2012 Repl.), to receive public comment on the written proposals. At the public hearing, the Board heard testimony from Will Stephens, Chairperson of ANC 2B, in support of the ANC proposal, and from Robin Diener and Ramon Estrada, on behalf of the DCCA proposal. Ms. Diener is the Chair of the Regulatory Committee of the DCCA and Mr. Estrada is the President of DCCA.

Commissioner Stephens testified that his ANC held a series of listening sessions that were noticed and open to the public to receive comment on the existing moratorium. These sessions were constructive and well attended, and were held for the benefit of the affected 17th Street NW residents, as well as the businesses located in the broader neighborhood of Dupont Circle. A wide range of comments from those in attendance guided the ANC in shaping its proposal. Additionally, the ANC held another round of listening sessions following publication of the draft proposal. After the second round of listening sessions concluded, the proposal was considered by the full Commission at its August 2013 meeting. The ANC adopted the proposal as described above, when Commissioner Stephens broke a tie on the four (4) to four (4) vote. The four non-prevailing votes desired to lift the existing moratorium altogether.

Commissioner Stephens believes that a modification of the existing moratorium is the appropriate solution to incorporate the concerns of the community who desire to enliven the neighborhood, and those who fear that a complete lifting may result in unintended consequences. There is also a desire on the part of the ANC and the community to ensure that the neighborhood does not foreclose opportunities for liveable retail such as hardware stores, dry cleaners, and flower shops.

Commissioner Stephens further testified that the process used by the ANC to gather and discern community input is consistent with their past processes used in other moratoria hearings, to include the recently considered moratorium at 14th and U Streets NW.

Commissioner Stephens explained that the rationale for retaining the restrictions on CT/DT and CN/DN licenses is due to the issues of peace, order and quiet that remain an ongoing concern for the neighborhood. Thus, the cap on restaurants was lifted to allow for continued growth of a vibrant and active neighborhood, without risking public safety that sometimes accompanies taverns and nightclubs.

Commissioner Stephens testified that the ANC made no recommendations with respect to amending 23 DCMR § 307.9 regarding the limitations on expansion of service or sale of alcoholic beverages into any adjoining or adjacent space, property, or lot.

Ms. Diener, on behalf of the DCCA, testified that her organization sought a more robust report from the ANC, specifically regarding the preservation of neighborhood retail businesses. She doesn't believe that enough data was provided in the ANC report to guide the Board in its decision-making. Ms. Diener submitted that further study is necessary to examine this particular issue in greater detail, and that an additional one hundred and twenty (120) days would allow all concerned parties to address this issue. She testified that the DCCA was prepared to assist the ANC in this undertaking, but was not invited to contribute when the proposal was initially drafted. She also stated that she was unaware that the business community had provided input on the ANC's proposal.

The DCCA has requested additional time to work with the ANC, Main Streets and local businesses, in order to develop a more comprehensive report for the Board's consideration. Ms. Diener further testified that merely lifting the cap on restaurants does not guarantee that the community will receive the kind of restaurants that are appropriate for that neighborhood. She stated that the churn in ABC-licensed establishments sought by some residents is a sign of businesses failing, and that the Dupont Circle neighborhood is currently enjoying a stable environment due to the success of the businesses located there.

Mr. Estrada testified that part of the study proposed by the DCCA would include interviewing property brokers, landlords and surrounding businesses. He further stated that these broader interviews were originally the objective of the ANC, but that it was never accomplished. The DCCA would like to explore all options to understand whether a more measured relaxation of the moratorium isn't more appropriate than the lifting of the cap on the licenses of an entire retailer's class.

The Board took the views of ANC 2B and DCCA into consideration and determined that the ANC proposal to continue the moratorium while allowing for modifications to lift certain restrictions constitutes a reasonable, measured, and appropriate solution for the Dupont Circle neighborhood.

In reaching its decision, the Board gave great weight to the written recommendations of ANC 2B as required by Section 13(d)(3) of the Advisory Neighborhood Councils Act of 1975, effective October 10, 1975 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d)(3) (2012 Repl.), and D.C. Official Code § 25-609 (2012 Repl.).

Specifically, the Board agrees with the testimony provided by ANC 2B to: (1) renew the existing EDCMZ for a three (3) year period; (2) maintain the cap on Retailer Class CT/DT and CN/DN; (3) lift the restrictions on the number of Retailer Class A, Class B, Class CR/DR and Class CX/DX licenses; (4) retain the current exemptions for hotels; (5) retain the existing language pertaining to the transfer of ownership; (6) retain the prohibition on the transfer of Retailer Class CT/DT or CN/DN from outside the moratorium zone to inside the moratorium zone; and (7) retain the prohibition on the change of all Retailer Class CT/DT or CN/DN licenses.

Additionally, notwithstanding the absence of a recommendation from the ANC, the Board will further modify the existing moratorium by lifting the limitations on the expansion of service or

sale of alcoholic beverages into any adjoining or adjacent space, property, or lot. In doing so, the Board cautions licensees who seek a lateral expansion to do so with an understanding that Dupont Circle is a historic neighborhood and as such, the Board will give great scrutiny to any request that profoundly changes the nature and character of the neighborhood.

Pursuant to § 25-351, the Board determined that it was in the public interest to renew the moratorium with certain modifications, and in doing so, the Board based its decision upon the appropriateness standards set forth in D.C. Official Code §§ 25-313 and 25-314 (2012 Repl.). Specifically, under D.C. Official Code § 25-313(b), the testimony presented at the hearing as well as the written proposal with regard to peace, order, and quiet, justified the need for the renewal of the moratorium zone with a relaxation of some of the current restrictions.

The statements set forth above reflect the written reasons for the Board's decision as required by 23 DCMR § 303.1.

The text of the final rules is identical to the text of the notice published in the *D.C. Register* on January 31, 2014, at 61 DCR 000861. Pursuant to D.C. Official Code § 25-211(b)(2) (2012 Repl.), the proposed rules were transmitted to the Council of the District of Columbia (Council), for a ninety (90) day period of Council on May 30, 2014. The proposed rules were approved by Council Resolution 20-534, the "East Dupont Circle Moratorium Zone Approval Resolution of 2014", adopted by the Council at its July 14, 2014, legislative meeting. These final rules were adopted by the Board on July 23, 2014, on a vote of five (5) to zero (0), and they will become effective five (5) days after publication in the *D.C. Register*.

Section 306, EAST DUPONT CIRCLE MORATORIUM ZONE, of Chapter 3, LIMITATIONS ON LICENSES, of Title 23, ALCOHOLIC BEVERAGES, of the DCMR, is amended to read as follows:

306 EAST DUPONT CIRCLE MORATORIUM ZONE.

- 306.1 A limit shall exist on the number of Retailer's licenses issued in the area that extends approximately six hundred (600) feet in all directions from the intersection of 17th and Q Streets, N.W., Washington, D.C., as follows: Class CT or Class DT – Two and (2); Class CN or DN – Zero (0). This area shall be known as the East Dupont Circle Moratorium Zone.
- 306.2 The East Dupont Circle Moratorium Zone is more specifically described as the area bounded by a line beginning at New Hampshire Avenue and S Street, N.W.; continuing east on S Street, N.W., to 17th Street, N.W.; continuing south on 17th Street, N.W., to Riggs Place, N.W.; continuing east on Riggs Place, N.W., to 16th Street, N.W.; continuing south on 16th Street, N.W., to P Street, N.W.; continuing west on P Street, N.W., to 18th Street, N.W.; continuing north on 18th Street, N.W., to New Hampshire Avenue, N.W.; and continuing northeast on New Hampshire Avenue, N.W. to S Street, N.W.

- 306.3 All hotels, whether present or future, shall be exempt from the East Dupont Circle Moratorium Zone.
- 306.4 Nothing in this section shall prohibit the Board from approving the transfer of ownership of a CT or DT located within the East Dupont Circle Moratorium Zone, subject to the requirements of the Act and this title.
- 306.5 Nothing in this section shall prohibit the Board from approving the transfer of a license from a location within the East Dupont Circle Moratorium Zone to a new location within the East Dupont Circle Moratorium Zone.
- 306.6 A license holder outside the East Dupont Circle Moratorium Zone shall not be permitted to transfer its license to a location within the East Dupont Circle Moratorium Zone unless the transfer will not exceed the number of licenses permitted in the East Dupont Circle Moratorium Zone for that particular class or type, as set forth in Section 306.1.
- 306.7 Subject to the limitation set forth in Section 306.8, nothing in this section shall prohibit the filing of a license application or a valid protest of any transfer or change of license class.
- 306.8 No licensee in the East Dupont Circle Moratorium Zone shall be permitted to request a change of license class to CT, DT, CN, or DN.
- 306.9 This section shall expire three (3) years after the date of publication of the notice of final rulemaking.